

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 8.5 Consumer Products

Article 5. Hairspray Credit Program

§ 94573. Violations.

(a) *Violations in General.* Any person who commits a violation of this article is subject to the penalties specified in Health and Safety Code section 42400 et seq. Failure to meet any requirement of this article or any condition of an applicable Executive Order shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subsections (b), (c), (d), (e) and (f) of this section.

(b) *Exceedances of Specified VOC Content.* Any exceedance during the applicable compliance period of the VOC content specified for a hairspray product or other consumer product in the Executive Order approving (1) Part Two of an application to request HERCs pursuant to section 94563 or (2) an application to use HERCs pursuant to section 94568 shall constitute a single, separate violation of the requirements of this article for each product unit manufactured during the applicable compliance period for sale in California which exceeds the specified VOC content.

(c) *False Reporting of Information.*

(1) False reporting of any information contained in an application to request HERCs pursuant to section 94563, or in any supporting documentation or amendments to an application, shall constitute a single, separate violation of the requirements of this article for each day of the credit generation period for the HERCs.

(2) False reporting of any information contained in an application to use HERCs pursuant to section 94568, or in any supporting documentation or amendments to an application, shall constitute a single, separate violation of the requirements of this article for each day during the time period in which the HERCs are to be used.

(3) False reporting of any information submitted to satisfy the requirements of section 94571(b) for documented sales information during a delayed compliance period shall constitute a single, separate violation of the requirements of this article for each day of the delayed compliance period.

(d) *Failure to Meet Applicable Deadlines.* Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

(1) Failure to submit accurate documented sales for a delayed compliance period (or a portion of the period, if applicable) within 120 days after conclusion of this period, as specified in section 94571(b), or within the time schedule specified in the Executive Order approving the application to use HERCs.

(2) Failure to completely reconcile a negative balance for a HERC account within 180 days after the conclusion of the applicable delayed compliance period (or portion of the period, if applicable) as specified in section 94571(d), or within the time schedule specified in the Executive Order approving the application to use HERCs.

(e) *Negative Balances in HERC Accounts at End of Delayed Compliance Period.* Except as provided in subsection (f) of this section, any overall negative balance that occurs in a HERC Account after the Executive Officer has made the correction specified in section 94571(c) for the difference between “Projected Excess Emissions” and “Actual Excess Emissions” at the end of a delayed compliance period (or portion of the period, if applicable) shall constitute a single, separate violation of the requirements of this article for each day of the delayed compliance period, or portion of the period.

(f) *Number of Violations Resulting from Negative Balances.* If a violation specified in subsection (e) of this section occurs, the responsible party may, pursuant to this subsection (f), establish a number of violations less than that set forth in subsection (e) as calculated according to the following equation:

$$\text{Number of Violations} = \text{Days}_{\text{Delayed}} - \text{Days}_{\text{Covered}}$$

where,

“Days_{Delayed}” means the number of days in the delayed compliance period (or portion of the period, if applicable)

“Days_{Covered}” means the number of days in the delayed compliance period (or portion of the period, if applicable) for which there are sufficient HERCs to offset excess emissions as calculated using the following equation:

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$$\text{Days}_{\text{Covered}} = \frac{(\text{HERCs}_{\text{Provided}} + \text{HERCs}_{\text{Correction}})(\text{Days}_{\text{Delayed}} / \text{Actual Excess Emissions})}{1}$$

where,

“HERCs_{Provided}” means the amount of HERCs, expressed as pounds, removed from the applicant’s HERC Account upon approval of a HERC use application pursuant to section 94571(a);

“HERCs_{Correction}” means the amount of HERCs, expressed as pounds, removed from the applicant’s HERC Account to correct for a difference in “Projected Excess Emissions” and “Actual Excess Emissions” pursuant to section 94571(c); and

“Actual Excess Emissions” means the amount of excess emissions, expressed as pounds, from a consumer product manufactured during a delayed compliance period (or portion of the period, if applicable) as calculated pursuant to section 94569 and reported by the responsible party pursuant to section 94571(b).

The responsible party may determine the number of violations pursuant to this subsection (f) only if it has provided all required information for the applicable delayed compliance period (or portion of the period, if applicable) as specified in the Executive Order approving the HERC use. By choosing this option, the responsible party waives any and all legal objections to the calculation of the number of violations pursuant to this subsection (f).

(g) *Assessment of Penalties.* In assessing the amount of penalties for any violation occurring pursuant to subsections (a)-(f) of this section, the circumstances identified in Health and Safety Code section 42403(b) shall be taken into consideration.

(h) *Statute of Limitations.* Any limitation of time applicable to actions brought pursuant to this article shall be deemed to accrue on the date(s) when the records establishing a violation are received by the Executive Officer.

(i) *Liability of Responsible Parties and HERC Account Holders.* A responsible party or HERC Account holder is fully liable for compliance with the requirements of this article, even if the responsible party or HERC account holder contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

NOTE: Authority cited: Sections 39600, 39601 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000, 41712, 42400-42403 and 42404.5, Health and Safety Code; and Section 338(k), Code of Civil Procedure

REFERENCE